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**MAILED**

**AUG 16 2011**

**OFFICE OF PETITIONS**

In re Application of :  
Churchill, et al. :  
Application No. 10/677,578 : ON PETITION  
Filed: October 2, 2003 :  
Attorney Docket No. 115-007 :

This is a decision on the renewed application for patent term adjustment under 37 CFR 1.705(b), filed May 12, 2011. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from thirty-three (33) days to one thousand two hundred forty-one (1241) days.

The renewed application for patent term adjustment under 37 CFR 1.705(b) is **GRANTED to the extent indicated herein.**

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one thousand twenty-eight (1028) days. A copy of the revised PAIR screen, showing the correct determination, is enclosed.

On September 29, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 33 days.

Applicants assert a 1208 day period of adjustment should be entered for Office delay in mailing an Office action in response to an amendment filed October 10, 2006. The Office concurs an adjustment is warranted, but differs in the length of the period. On April 10, 2006, the Office mailed a non-final Office action. The Office action was not received by applicants. The fact that applicants did not receive it is not shown to be due to Office error. On October 10, 2006, applicants filed a petition to have the period for response re-set via a petition

under 37 CFR 1.181 and an amendment in response to the April 10, 2006 non-final Office action. It is specifically noted that the petition under 37 CFR 1.181 was filed prior to the mailing of any notice of abandonment. Thus, there was no applicant delay within the meaning of 37 CFR 1.704(c)(4). This petition was dismissed on March 3, 2007. On April 16, 2007, applicants filed a renewed petition. On May 17, 2010, the Office mailed a decision signed by the T.C. Director, granting withdrawal of the holding of abandonment and stating that the October 10, 2006 amendment is considered timely filed. Therefore, there is no Applicant delay under 37 CFR 1.704(b).

As the response was received on October 10, 2006 and is an acceptable response to the non-final Office action, the Office delay pursuant to 37 CFR 1.702(a)(2) is from 4 months/120 days after October 10, 2006, February 7, 2007, to June 3, 2010, the date of mailing of the notice of allowance, and is 1213 days. A period of adjustment of 1213 days is being entered.

However, the reply filed on October 10, 2006 contained an omission. As stated in MPEP 2732:

37 CFR 1.704(c)(7) establishes submission of a reply having an omission (37 CFR 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Submitting a reply having an omission requires the Office to issue an action under 37 CFR 1.135(c) and await and process the applicant's reply to the action under 37 CFR 1.135(c) before the initial reply (as corrected) can be treated on its merits. In addition, 37 CFR 1.704(c)(7) provides that in such a case the period of adjustment set forth in 37 CFR 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date that the reply or other paper correcting the omission was filed. The reference to 37 CFR 1.135(c) is parenthetical because 37 CFR 1.704(c)(7) is not limited to Office actions under 37 CFR 1.135(c) but applies when the Office issues any action or notice indicating that a reply has an omission which must be corrected: e.g., (1) a decision on a petition under 37 CFR 1.47 dismissing the petition as lacking an item necessary to grant the petition; or (2) a notice indicating that the computer readable format sequence listing filed in reply to a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence

Disclosures (PTO-1661) does not comply with 37 CFR 1.821 et seq.

The petition under 37 CFR 1.181 was dismissed on March 3, 2007. On April 16, 2007, applicants filed a request for reconsideration of the March 3, 2007 petition and an affidavit. On May 17, 2010, the renewed petition was granted. The October 10, 2006 Rule 181 petition contained an omission. A grantable petition under Rule 181 was not filed until April 16, 2007. Pursuant to 37 CFR 1.704(c)(7), a 188 day period of reduction is being entered for the period beginning October 11, 2006, the day after the reply containing an omission was filed, and ending on April 16, 2007, the date a grantable Rule 181 petition was filed.

A review of PTA calculations for the application reveals other instances of Applicant delay.

On July 22, 2010, after the June 3, 2010 Notice of Allowance was mailed, applicants filed a Rule 312 amendment. Pursuant to 37 CFR 1.704(c)(10), a period of reduction of 7 days is being entered for the period beginning on July 22, 2010, the date the Rule 312 amendment was filed, and ending on July 28, 2010, the date the Office mailed a response to the Rule 312 amendment.

On August 19, 2010, applicants filed a Rule 312 amendment. Pursuant to 37 CFR 1.704(c)(10), a period of reduction of 7 days is being entered for the period beginning on August 19, 2010, the date the Rule 312 amendment was filed, and ending on August 31, 2010, the date the Office mailed a response to the Rule 312 amendment.

On September 20, 2010, applicants filed a petition to withdraw from issue, a RCE, and an IDS. Pursuant to 37 CFR 1.704(c)(10), a period of reduction of 10 days is being entered for the period beginning on August 20, 2010, the date the aforementioned correspondence was filed, and ending on September 29, 2010, the date the Office mailed a Notice of Allowance, which was last piece of Office correspondence addressing the September 20, 2010 filings.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is one thousand twenty-eight (1028) days. The PTA calculation formula is 1266 (53 + 1213) days Office delay - 238 (20 + 188 + 7 + 13 + 10) days Applicant delay.

The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Office of Data Management so that a patent can be issued. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

A handwritten signature in black ink, reading "Shirene Willis Brantley". The signature is written in a cursive, flowing style.

Shirene Willis Brantley  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of Revised PAIR Screen



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10/677,578

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115-007

PP

Select New Case	Application Data	Transaction History	Image File Wrapper	Patent Term Adjustments	Continuity Data	Published Documents	Address & Attorney/Agent	Display References
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## Patent Term Adjustment

Filing or 371(c) Date:	10-02-2003	Overlapping Days Between {A and B} or {A and C}:	0
Issue Date of Patent:	-	Non-Overlapping USPTO Delays:	53
A Delays:	53	PTO Manual Adjustments:	995
B Delays:	0	Applicant Delays:	20
C Delays:	0	Total PTA Adjustments:	1028

## Patent Term Adjustment History

## Explanation Of Calculations

Number	Date	Contents Description	PTO (Days)	APPL (Days)	Start
128	08-14-2011	Adjustment of PTA Calculation by PTO	995		0
106	09-29-2010	Mail Notice of Allowance			0
105	09-27-2010	Allowed Case Returned to the Examiner for Clerical Processing			0
104	09-27-2010	Issue Revision Completed			0
103	09-27-2010	Document Verification			0
102	09-27-2010	Notice of Allowance Data Verification Completed			0
101	09-27-2010	Case Docketed to Examiner in GAU			0
100	09-24-2010	Allowability Notice			0
99	09-20-2010	Information Disclosure Statement considered			0
98	09-17-2010	Petition Entered			0
96	09-20-2010	Information Disclosure Statement (IDS) Filed			0
95	09-20-2010	Request for Continued Examination (RCE)			0
94	09-21-2010	Disposal for a RCE / CPA / R129			0
93	09-20-2010	Electronic Information Disclosure Statement			0
92	09-20-2010	Mail-Record Petition Decision of Granted to Withdraw from Issue - with assigned Patent NO.			0
91	09-20-2010	Record Petition Decision of Granted to Withdraw from Issue - with assigned Patent NO.			0
90	09-20-2010	Withdrawal Patent Case from Issue			0
89	09-20-2010	Withdrawal Patent Case from Issue			0
88	09-20-2010	Petition Entered			0
87	09-20-2010	Workflow - Request for RCE - Begin			0
86	09-15-2010	Issue Notification Mailed			0
84	09-02-2010	Export to Final Data Capture			0
	09-01-				

83	2010	Dispatch to FDC	0
82	08-31-2010	Mail Response to 312 Amendment (PTO-271)	0
81	08-30-2010	Response to Amendment under Rule 312	0
80	08-19-2010	Amendment after Notice of Allowance (Rule 312)	0
79	08-23-2010	Application Is Considered Ready for Issue	0
78	08-19-2010	Issue Fee Payment Verified	0
77	08-19-2010	Issue Fee Payment Received	0
76	07-27-2010	Finished Initial Data Capture	0
75	07-28-2010	Mail Response to 312 Amendment (PTO-271)	0
74	07-22-2010	Response to Amendment under Rule 312	0
73	07-22-2010	Amendment after Notice of Allowance (Rule 312)	0
72	07-14-2010	Mail PUB other miscellaneous communication to applicant	0
71	07-14-2010	PUB Other miscellaneous communication to applicant	0
70	06-07-2010	Export to Initial Data Capture	0
69	06-03-2010	Mail Notice of Allowance	0
68	06-02-2010	Issue Revision Completed	0
67	06-02-2010	Document Verification	0
66	06-02-2010	Notice of Allowance Data Verification Completed	0
65	05-28-2010	Allowability Notice	0
64	05-28-2010	Case Docketed to Examiner in GAU	0
63	05-17-2010	Mail-Petition to Revive Application - Granted	0
62	05-14-2010	Petition to Revive Application - Granted	0
61	04-16-2007	Petition Entered	0
60	04-16-2007	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
59	04-16-2007	Miscellaneous Incoming Letter	0
58	04-13-2007	Mail Abandonment for Failure to Respond to Office Action	0
57	04-11-2007	Aband. for Failure to Respond to O. A.	0
56	03-30-2007	Mail-Petition Decision - Dismissed	0
55	10-10-2006	Petition Entered	0
53	04-10-2006	Mail Non-Final Rejection	0
52	04-06-2006	Non-Final Rejection	0
51	03-16-2006	Date Forwarded to Examiner	0
50	03-13-2006	Request for Continued Examination (RCE)	0
49	03-16-2006	Disposal for a RCE / CPA / R129	0

48	03-13-2006	Workflow - Request for RCE - Begin		0
47	03-01-2006	Mail Advisory Action (PTOL - 303)		0
46	02-24-2006	Advisory Action (PTOL-303)		0
45	02-16-2006	Date Forwarded to Examiner		0
44	02-13-2006	Amendment after Final Rejection		0
43	01-19-2006	Mail Final Rejection (PTOL - 326)		0
42	01-13-2006	Final Rejection		0
41	12-22-2005	Date Forwarded to Examiner		0
40	12-19-2005	Response after Non-Final Action		0
39	10-05-2005	Mail Non-Final Rejection		0
38	09-30-2005	Non-Final Rejection		0
37	09-27-2005	Date Forwarded to Examiner		0
36	09-20-2005	Amendment after Final Rejection		0
35	06-21-2005	Mail Final Rejection (PTOL - 326)		0
34	06-17-2005	Final Rejection		0
33	05-11-2005	Date Forwarded to Examiner		0
32	05-04-2005	Response after Non-Final Action	20	29
31	04-21-2005	Mail Notice of Informal or Non-Responsive Amendment		0
30	04-21-2005	Date Forwarded to Examiner		0
29.1	04-14-2005	Informal or Non-Responsive Amendment after Examiner Action		0
29	04-14-2005	Response after Non-Final Action		0
28	01-24-2005	Mail Non-Final Rejection	53	-1
27	01-19-2005	Non-Final Rejection		0
26	11-23-2004	IFW TSS Processing by Tech Center Complete		0
25	11-23-2004	Case Docketed to Examiner in GAU		0
24	11-09-2004	Transfer Inquiry to GAU		0
23	11-05-2004	Transfer Inquiry to GAU		0
22	03-31-2004	Application Return from OIPE		0
21	04-01-2004	Application Is Now Complete		0
20	01-06-2004	Corrected Paper		0
19	03-31-2004	Pre-Exam Office Action Withdrawn		0
18	03-31-2004	Application Return TO OIPE		0
17	03-31-2004	Application Return from OIPE		0
	03-31-			

16	2004	Application Return TO OIPE	0
15	03-30-2004	Application Return from OIPE	0
14	03-31-2004	Application Is Now Complete	0
13	01-08-2004	Pre-Exam Office Action Withdrawn	0
12	03-31-2004	Pre-Exam Office Action Withdrawn	0
11	03-30-2004	Application Return TO OIPE	0
10	03-30-2004	Application Dispatched from OIPE	0
9	03-31-2004	Application Is Now Complete	0
8	03-11-2004	Additional Application Filing Fees	0
7	03-11-2004	Applicant has submitted new drawings to correct Corrected Papers problems	0
6	01-08-2004	Corrected Paper	0
4	12-17-2003	CASE CLASSIFIED BY OIPE	0
3	12-17-2003	Cleared by OIPE CSR	0
2	11-16-2003	IFW Scan & PACR Auto Security Review	0
1	10-02-2003	Initial Exam Team nn	0

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